

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARK N. FELLENZ,)
)
Plaintiff,)
)
v.)
)
ENKATA TECHNOLOGIES, INC.,)
)
Defendant)
)

C.A. No. 04-10563-PBS

Filed in USDC-MA
04-12-05 at 2:00 PM**EMERGENCY MOTION OF DEFENDANT TO EXTEND THE TIME
WITHIN WHICH IT MAY RESPOND TO THE AMENDED COMPLAINT**

On March 3, 2005, this court entered a scheduling order that required, among other things, that the plaintiff file an amended complaint no later than March 31, 2005. On April 1, 2005 the plaintiff mailed his amended complaint to the defendant, and presumably, to the court. According to the court's docket, it did not receive the plaintiff's amended complaint until April 4, 2005. The defendant's copy, however, did not show up in counsel's office until April 8, 2005 – eight (8) days after the required filing date as set forth in the scheduling order. The amended complaint is forty-six (46) pages long and is hardly the "short and plain statement of the claim" envisioned by the Rules of Civil Procedure. See, Fed.R.Civ.P. 8(a)(2).

Defendant's counsel is going on vacation out of state from April 13 to April 25, 2005 and, accordingly, he called the plaintiff in order to obtain an extension to respond to the late filed (and served) complaint. Even though plaintiff served the amended complaint one week late, he was only willing to extend the time within which defendant could respond to the complaint to and including April 27, 2005, which affords the defendant's counsel only three (3) days upon his return from vacation to respond to this forty-six (46) page complaint.

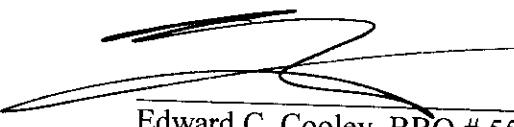
Had the complaint been timely filed and served on defendant's counsel, there would have

been ample time for counsel to have responded to the complaint before leaving on vacation. As a result of the late delivery of the complaint (due to plaintiff having used the incorrect zip code; see envelope attached hereto as Exhibit 1) the defendant now has literally only a matter of days to respond.

Accordingly, the defendant moves this Honorable Court to extend the time within which it may answer the amended complaint in this matter to and including May 9, 2005. That date will allow the defendant's counsel, upon his return, ten (10) working days within which to respond to the complaint.

WHEREFORE, the defendant moves this Honorable Court to extend the time within which it may respond to the amended complaint in the above-captioned matter to and including May 9, 2005.

Respectfully submitted,
ENKATA TECHNOLOGIES, INC.
By its attorney,


Edward C. Cooley BBO # 550117
GIARRUSSO, NORTON, COOLEY
& McGLONE, P.C.
308 Victory Road
Quincy, MA 02171
(617) 770-2900

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail-hand on 4/17/05

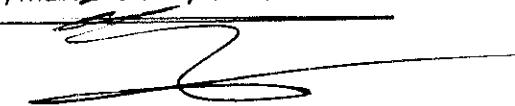


EXHIBIT 1

Answer Bond #1
to Plaintiff, MA 02459
10563-PBS

Mr. Edward C. Cooley
1000 Main St., Norton, Cooley
u. Melan, P.C.
308 Main St.
Quincy, MA [REDACTED]

EDWARD COOLEY

02/17/1



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